IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5681 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

LAKHABHAI MANABHAI - Petitioner(s)

Versus

RASIKBHAI K PATEL & 1 - Respondent(s)

==========

Appearance :

MR AJ PATEL for Petitioner(s) : 1,None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 2,
MR JAYESH M PATEL for Respondent(s) : 1,
Mr. Dipen Desai, AGP for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/09/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India the petitioners have challenged the legality and validity of the judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated

29.12.1988 in Revision Application SRD No. 9/87 in dismissing the same and confirming the order passed by the Deputy Collector, Viramram Prant, dated 30th January 1987 in Fragmentation Case No. 2628 in cancelling the sale in favour of the petitioners as well as cancelling Entry No. 2547 with respect to the land in question.

2. The dispute is with regard to land bearing Block No. 863 situate at Village Lambha, Taluka-Dascroi admeasuring 1 acre and 10 gunthas of land which was originally owned by one Rasikhbhai Khodabhai Patel; the said land in question came to be purchased by the petitioners by Registered Sale Deed dated 27.10.1980; the name of the petitioners came to be mutated in the Revenue record vide Entry No. 2547; and the same came to be certified by the Mamlatdar and ALT, Dascroi on 28.4.1982. After a period of almost 7 years, the Deputy Collector, Viramgam Prant, initiated proceedings under the provisions of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1948, [hereinafter referred to as “the Act”] as according to him the sale in favour of the petitioners was in breach of Section 31 of the Act and proceedings were initiated under Section 9 of the Act. By order dated 21.2.1987 the Deputy Collector, Viramgam Prant, Ahmedabad declared the sale in favour of the petitioners as invalid and in breach of of the provisions of the Act and also set aside Entry No. 2547 by further imposing

the fine of Rs. 250/-. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Viramgam Prant, Ahmedabad, dated 21.2.1987 the respondent No.1 preferred Revision application before the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application SRD No. 9/87 and the Additional Chief Secretary (Appeals), Revenue Department dismissed the said revision application by order dated 29.12.1988on the ground that so far as the revisionist is concerned he has already sold the land and the purchasers had not made any representation. It appears from the record that thereafter the petitioners submitted an application on the ground that they are very poor persons; that they could not make any proper representation before the learned Special Secretary; they even did not challenge the original order as they were informed that as the seller has already preferred revision application they could not file any revision application; and therefore it was requested to reconsider the order. However, the Additional Chief Secretary (Appeals) by order dated 31st March 1989 dismissed the said application. Being aggrieved and dissatisfied with the aforesaid orders passed by the Deputy Collector as well as the Additional Chief Secretary (Appeals), Revenue Department, in cancelling the sale in favour of the petitioners in breach of the provisions of the Act, the petitioners have preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri AJ Patel, learned advocate appearing on behalf of the practitioners has vehemently submitted that the petitioners purchased the land in question in 1980 and names of the petitioners were mutated in the Revenue records in the year 1981 and though the authority had sufficient knowledge about the transaction in the year 1981 proceedings came to be initiated by the Deputy Collector after a period of 6 years of transaction which was not permissible after unreasonable period as held by the Division Bench of this Court in the case of Valjibhai Jagjivanbhai Vs. State of Gujarat, reported in 2002(5) GLH 34 and therefore it is requested to allow the present Special Civil Application on this ground alone.

4. Shri Dipen Desai, learned AGP is not in position to dispute the fact that proceedings were initiated after a period of almost 7 years, however he has submitted that as the transaction was a nullity the proceedings can be initiated at any time, and when the transaction was found to be in breach of the Act all the authorities below are justified in cancelling the entries in favour of the petiitoners. He has therefore requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing for the parties. It is not in dispute, that the

petiitoners purchased the land in question in 1980 and the names of the petitioners on the basis of the said sale deed came to be mutated in the Revenue record in the year 1981 and the same came to be certified. It is also not in dispute that thereafter proceedings came to be initiated by the Deputy Collector under the provisions of the Act after a period of almost 7 years. As held by the Division Bench of this Court in the case of Valjibhai Jagjivanbhai (supra), the authorities are required to initiate proceedings within a reasonable time and certainly '7 years' cannot be said to be a reasonable period. In that case, the Division Bench of this Court has relied upon the judgment of the Hon'ble Supreme Court in the case of Mohammed Kavi Mohamad Amin Vs. Fatmabai Ibrahim, reported in 1997 (6) SCC Page 71 on the proposition that the powers which were exercised after a period of 4 years are considered to be exercised after unreasonable period and that initiation of enquiry at a belated stage is not permitted. On that ground alone the present Special Civil Application is required to be allowed considering the aforesaid judgment of this Court.

6. For the reasons stated above, the petition succeeds. The order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, dated 29.12.1988 in Revision Application SRD

No. 9/87 as well as the order passed by the Deputy Collector, Viramgam Prant, Ahmedabad, dated 21.2.1987 in declaring the transfer in favour of the petitioners as invalid and cancelling the Entry No. 2547, are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.